

P-3067/NA-91-689 ORDER GRANTING CERTIFICATE OF AUTHORITY,  
ESTABLISHING ADVISORY PANEL, AND SOLICITING COMMENTS ON STATE-  
WIDE ACCESS TO VIDEOTEX GATEWAY SERVICES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson  
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Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Filing by CLM  
Associates for a Certificate of  
Authority to Offer Videotex  
Gateway Services

ISSUE DATE: December 4, 1991

DOCKET NO. P-3067/NA-91-689

ORDER GRANTING CERTIFICATE OF  
AUTHORITY, ESTABLISHING ADVISORY  
PANEL, AND SOLICITING COMMENTS  
ON STATE-WIDE ACCESS TO VIDEOTEX  
GATEWAY SERVICES

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

On May 2, 1991, U S WEST Communications, Inc. (U S WEST) filed a proposal to introduce a videotex gateway service, called "Community Link," in the Twin Cities metropolitan area. On September 13, 1991, U S WEST amended its proposal. Under the amended proposal U S WEST would provide only billing and collection services; videotex gateway service would be provided by CLM Associates, a partnership between U S WEST and Minitel Northwest, Inc. That same day, CLM Associates applied for a certificate of authority to provide videotex gateway services to U S WEST subscribers in the Twin Cities metropolitan area.

On October 11, 1991, the Commission issued a notice soliciting comments from interested persons. The Department of Public Service (the Department), the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), Systems Dynamics, Inc., and Richard Neumeister filed comments on the application. None of the commenting parties opposed the application. They did, however, suggest modifications in the terms and conditions of service, address ratemaking issues, and raise privacy concerns. Vista Telephone Company of Minnesota appeared and asked the Commission to defer action on proposals to require statewide offering of the service until Vista and other independent local exchange carriers had had opportunity to file comments.

The matter came before the Commission on November 8, 1991.

## FINDINGS AND CONCLUSIONS

### **II. Factual Background**

#### **A. The Nature of the Service**

Community Link is a "videotex gateway service." It will provide subscribers with computer access to an assortment of information services through the telecommunications network. Examples of services CLM Associates hopes to offer through Community Link include banking, shopping, classified advertising, electronic mail, telephone and address directories, electronic bulletin boards, and travel and entertainment information and reservations.

CLM Associates believes Community Link has significant potential for changing the way subscribers communicate and transact business. The company points to the French experience with Minitel, a shorthand term for the network of mini-computers linking French telephone subscribers through the publicly-owned telecommunications system. CLM Associates claims the instant access to information provided by Minitel has helped French business respond to the globalization of the economy and that Minitel has become an integral part of the French infrastructure. The company believes Community Link could provide competitive advantages to Twin Cities businesses and increased convenience to Twin Cities consumers.

To participate in Community Link, information service providers will pay a set-up fee, a monthly fee, and a per-minute or per-subscriber fee for subscriber usage. Subscriber access to the gateway will be free. Any U S WEST subscriber with a computer and a telephone modem can gain access by obtaining an account password. Normally, however, subscribers will be charged for their minutes of use by the information service providers.<sup>1</sup>

Subscribers will be able to control the use of their Community Link accounts by establishing individual or user group passwords and setting credit or usage limits by password. Families, for example, could set spending limits for children and block their access to adult-oriented information services by establishing special children's passwords. Businesses could establish work group passwords and limit access by password to business-related information services.

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<sup>1</sup> In a separate filing, U S WEST proposes to offer billing and collection services for the information service providers, in which case subscribers would receive their bills for information services with their telephone bills. In the Matter of a Filing by U S WEST Communications to Introduce Billing and Collection Service for Videotex Gateway Service, P-421/EM-91-329.

## **B. The Applicant Company**

CLM Associates is a recently formed partnership between U S WEST and Minitel Northwest, Inc. (Minitel Northwest). Minitel Northwest is a wholly owned subsidiary of Intelmatique S.A., a wholly owned subsidiary of France Telecom, the publicly owned French telephone utility. U S WEST holds a 60% interest in the partnership and Minitel Northwest a 40% interest.

## **III. Commission Action**

This filing involves a new service, a new telecommunications provider, and a transfer of assets from a regulated utility to an entity offering a service whose regulatory status is unclear. The filing therefore raises a number of serious and novel issues. These issues generally fall into the categories of public interest/pricing issues, ratemaking/transfer of assets issues, statewide availability issues, privacy issues, and issues surrounding unauthorized use of the service.

The Commission will grant CLM Associates a certificate of authority to provide Community Link services, under the terms and conditions proposed, with minor modifications. The issues raised by the filing will be taken up individually.

### **A. Public Interest/Pricing Issues**

Threshold issues in this and every application for a certificate of authority are whether the public convenience and necessity require it and whether the applicant has demonstrated an ability to provide safe, reliable service to the public. Minn. Stat. §§ 237.16, subd. 4; 237.06 (1990). Secondary issues are whether the specific rates or prices proposed are fair and reasonable, and, in the case of emergingly competitive services, whether proposed prices cover incremental costs. Minn. Stat. §§ 237.06; 237.60, subd. 4 (1990).

The Commission believes that the public convenience and necessity require granting CLM Associates a certificate of authority. Videotex information services clearly will benefit some Minnesota businesses and consumers. Offering those services through the telecommunications network, which will make them widely available, is in the public interest.

The Commission also believes CLM Associates is capable of providing safe and reliable service to the public. Between the two of them, the members of this partnership have substantial experience and expertise in most aspects of Community Link's operations. U S WEST has substantial expertise in providing telecommunications services to Minnesota homes and businesses. Minitel Northwest's parent companies have substantial expertise in providing videotex gateway services. Both companies have experienced, responsible management and are committed to ensuring quality management of CLM Associates. The partnership is

adequately capitalized. The Commission concludes it is in the public interest to grant CLM Associates a certificate of authority to provide videotex gateway services.

Minnesota law requires that prices charged for competitive telecommunications services<sup>2</sup> be "fair, just, and reasonable" and that they cover the incremental costs of providing the service. Minn. Stat. §§ 237.06; 237.60, subds. 4 and 5 (1990). The Commission believes the prices proposed by CLM Associates meet both standards.

CLM Associates' customers will be the providers of information services offered through the videotex gateway. Information service providers will be charged a set-up fee, a monthly fee, and a per-minute or per-subscriber usage fee. CLM Associates apparently is having no difficulty attracting information services providers at the proposed prices, one sign that the prices are fair and reasonable. No information providers have filed complaints or come forward in this proceeding to object to the proposed prices. The prices proposed will not result in excessive profits under reasonable expense and revenue forecasts. The Commission concludes the proposed prices meet the "fair, just, and reasonable" standard of Minn. Stat. §§ 237.06; 237.60, subds. 4 and 5 (1990).

Minnesota law also requires that the prices charged for competitive services cover the incremental costs of providing those services. Minn. Stat. § 237.60, subd. 4 (1990). The primary reasons for this requirement are to prevent cross-subsidization and to prevent predatory pricing.

Of course, trying to determine the incremental costs for a new company to provide a new service is a tenuous process. Incremental cost estimates in this case necessarily rest on projected numbers of customers, estimated expenses, forecasted revenues, estimated usage, and similar "soft" figures. The Commission agrees with the Department that the incremental cost estimates introduced by the company are generally credible and reflect a realistic, responsible approach to estimating incremental cost. The Commission agrees with the Department and other commenting parties that the company's filing demonstrates that the proposed prices cover incremental costs.

#### **B. Ratemaking/Transfer of Assets Issues**

Minn. Stat. § 237.23 (1990) requires Commission approval for the transfer of telephone company assets. Issues arising from U S WEST's transfer of assets to CLM Associates include whether the transferred property has been reasonably valued, the degree of risk the transfer imposes on Minnesota ratepayers, how the

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<sup>2</sup> Videotex gateway is clearly a competitive service, since it was not offered before August 1, 1987. Minn. Stat. § 237.59, subd. 1 (18) (1990).

transferred property should be treated in ratemaking, the transfer's effect on earnings and sharing under U S WEST's incentive plan, and appropriate accounting safeguards. The Commission believes these issues have been resolved satisfactorily.

The Commission notes from the start that this property transfer does not jeopardize U S WEST's ability to continue providing reliable local exchange and intraLATA interexchange service. The transfer therefore meets the first and most important condition for approval -- an ability to continue providing core services to monopoly ratepayers.

The second most important issue is how to treat the property transfer for ratemaking purposes. The issue here is whether ratepayers or shareholders should assume the risk and reap the profits or losses resulting from U S WEST's participation in this partnership.

Nationally, the regulatory status of videotex gateway services is still evolving. The Federal Communications Commission (FCC) currently views such services as "enhanced services," i.e., services which are not core monopoly services and are not subject to federal regulation. Under this view, shareholders would bear the full risk and reap the full benefit of U S WEST's participation in this partnership. U S WEST, however, has made an FCC filing arguing that a videotex gateway it provides in another jurisdiction is more properly classified as a basic service.<sup>3</sup> Under this view, ratepayers would face the same risks and incur the same benefits from U S WEST's investment in CLM Associates as from any other investment for the provision of local service.

The position of U S WEST and the other parties in this case is that the Commission can and should defer decisions on the ratemaking treatment of U S WEST's investment in Community Link until more information is available. Currently, U S WEST is operating under an incentive regulation plan that excludes the financial effects of FCC-deregulated services in computing earnings and sharing amounts. Since Community Link is an FCC-deregulated service, its financial performance will not affect ratepayers until the incentive plan ends in any case. The Commission agrees that the most reasonable approach is to address ratemaking treatment later.

Finally, transactions between regulated utilities and their affiliates regularly raise issues in regard to the valuation of transferred property and the ability of accounting safeguards to prevent cross-subsidization. The Commission agrees with all parties that the property transferred to CLM Associates by

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<sup>3</sup> Comments to the Petition for Declaratory Ruling of the NYNEX Telephone Companies, CC Docket 88-2, Phase I, March 1, 1989.

U S WEST was properly valued (at book value, because it was higher than market value) and that proposed accounting procedures provide adequate protection against cross-subsidization. The Commission notes that proposed accounting procedures were refined in response to parties' comments. This is important, because transactions between U S WEST and CLM Associates will continue, and all parties must have confidence in their ability to monitor those transactions under existing accounting procedures. The Commission expects both partners to adhere scrupulously to the accounting safeguards they have agreed to observe.

### **C. Statewide Availability**

Since videotex gateway service may offer significant economic advantages to geographical areas where it is available, the Department and the RUD-OAG argue that sound regulatory policy requires statewide availability. Minn. Stat. § 237.60, subd. 3 (1990) states a strong legislative policy in favor of statewide availability of high quality telecommunications services. The Commission, too, has long been committed to ensuring the benefits of modern communications technology throughout the state.

CLM Associates has stated its willingness to explore the potential for offering its service statewide. Vista Telephone Company of Minnesota has requested an opportunity to comment before the Commission decides this issue.

The Commission believes that Vista and other independent local exchange carriers, with their knowledge of local economies and local communication infrastructures, can provide valuable information on this issue. The Commission will therefore solicit comments from local exchange carriers and other interested persons and will defer the issue of statewide availability until the end of the comment period.

### **D. Privacy Issues**

Community Link clearly has the potential for consolidating in one data bank information that used to be in several different data banks (e.g., those belonging to banks, stockbrokers, travel agencies), as well as information that was not previously in any data bank (grocery purchases, bus schedule inquiries, placement of and responses to classified advertising). This raises significant privacy and security issues.

The RUD-OAG, the Department, and Richard Neumeister urged the Commission to establish an advisory panel to examine the privacy issues raised by Community Link and to report back to the Commission on appropriate safeguards. No one opposed the creation of such an advisory panel. Mr. Neumeister and the RUD-OAG also recommended that baseline privacy safeguards be put into place before provision of the service was authorized.

The Commission agrees on the need for baseline privacy safeguards and for comprehensive examination of privacy issues by an

advisory panel. The Commission will therefore require that CLM Associates include in its marketing materials and in its informational materials to Community Link subscribers a description of what it considers to be permissible uses of the data gathered on individuals through Community Link. The Commission will also memorialize, as a formal requirement, CLM Associates' pledge that it will not compile individual consumer profiles of Community Link subscribers, for marketing or other purposes.

The Commission will also establish an advisory panel, made up of all parties who filed substantive comments, to examine the privacy issues this filing raises. Those issues include the circumstances under which CLM Associates should be permitted to disclose information (including names and addresses) about subscribers to information services providers, whether CLM Associates should be permitted to disclose any information about subscribers without their permission, the circumstances under which any permitted disclosure should take place, what prohibitions exist or should exist on recording communications between subscribers and information services providers, and any other privacy issues the advisory panel believes the Commission should address.

#### **E. Issues Relating to Unauthorized Use**

A recurring problem in past offerings of information services has been unauthorized use of these services, particularly by children and other vulnerable persons. The adequacy of safeguards to prevent the unauthorized use of Community Link, then, is a significant issue in this proceeding. A related issue which must be addressed is the liability of information services providers for uncompensated, unauthorized use.

The Commission agrees with CLM Associates that Community Link provides structural safeguards against unauthorized use that are not available for audiotex information services. To use Community Link, one needs a computer, a telephone modem, a U S WEST calling card, and the password of a Community Link subscriber. CLM Associates also intends to offer account management features that will enable account holders to ration usage by persons otherwise likely to incur unauthorized charges. U S WEST intends to block calls from Community Link subscribers who discontinue their subscription to the service. This should reduce unauthorized use substantially. Nevertheless, experience strongly suggests that there will be an irreducible minimum of unauthorized use.

Systems Dynamics urged the Commission to institute protections for information providers before authorizing the service. The RUD-OAG agreed, and also urged the Commission to require CLM Associates to include in its subscriber orientation materials a full and understandable description of Community Link features that enable subscribers to control account usage and prevent unauthorized use. No one opposed these protections. The



Commission agrees that they are necessary and that establishing them now will prevent confusion and conflict later.

The parties have agreed to price list language proposed by CLM Associates to limit information services providers' liability for unauthorized use. The Commission finds this language reasonable and will require its addition to CLM Associates' price list pages: "Customer shall not be held liable for network usage charges incurred for an end user after the end user has cancelled access to Community Link."

#### **IV. Conclusion**

The Commission finds that the public interest requires granting a certificate of authority to provide videotex gateway service to CLM Associates. CLM Associates is authorized to provide the service under the terms and conditions proposed, with the minor modifications set forth above. The Commission will solicit comments from independent local exchange carriers on whether CLM Associates should be required to provide videotex gateway service throughout the state. The Commission will establish an advisory panel to address the privacy issues raised by this filing.

#### **ORDER**

1. CLM Associates is granted a certificate of authority to provide Community Link videotex gateway service.
2. The prices and terms and conditions of service proposed by CLM Associates are approved, with the modifications set forth in this Order.
3. U S WEST Communications, Inc. shall exclude the financial effects of its participation in the CLM Associates partnership from earnings and sharing calculations under the incentive plan.
4. The Commission invites independent local exchange carriers and other interested persons to file comments on whether CLM Associates should be required to offer Community Link throughout the state. Initial comments shall be filed within 60 days of the date of this Order. Reply comments shall be filed within 30 days of the expiration of the initial comment period.
5. The Commission invites all parties who filed substantive comments in this proceeding to serve on an Advisory Panel to examine the privacy issues raised by this service offering. The Commission asks the Department to chair the advisory panel and to report back to the Commission within four months of the date of this Order.

6. CLM Associates shall include in its marketing materials and subscriber information a description of what it considers to be permissible uses of the data on individuals on file in the Community Link data banks.
7. CLM Associates shall not compile consumer profiles of individual Community Link subscribers, for marketing purposes or other uses.
8. CLM Associates shall include in its subscriber information materials a full and understandable description of Community Link features which enable subscribers to control account usage and prevent unauthorized use.
9. CLM Associates shall add to its price list pages the following language: "Customer shall not be held liable for network usage charges incurred for an end user after the end user has cancelled access to Community Link."
10. Within 30 days of the date of this Order, CLM Associates shall file revised price list pages reflecting the decisions in this Order.
11. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

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